

**Editor's note: Reconsideration granted; decision reaffirmed by Order dated April 29, 1992. See 121 IBLA 233A th 233D below.**

HEIRS OF ALEXANDER WILLIAMS  
HEIRS OF GEORGE EDWIN  
HEIRS OF JAMES BUTLER

IBLA 89-453, 89-454, 89-458

Decided November 13, 1991

Appeals from decisions of the Alaska State Office, Bureau of Land Management, denying requests of the heirs of Native allotment applicants to reinstate Native allotment applications F-0422, F-0462, and F-0446.

Reversed and remanded.

1. Alaska: Native Allotments--Alaska National Interest Lands Conservation Act: Duty of Department of the Interior to Native Allotment Applicants

Reconsideration of a Departmental decision revoking approval of and rejecting an application for a Native allotment is appropriate where the record fails to demonstrate that the applicant (or heirs) received notice of the decision, had the opportunity to challenge that decision, and failed to take action to obtain review of the decision. A BLM decision deny-ing reinstatement of a Native allotment application will be reversed where the record does not show that the applicant or his heirs received notice of the revocation/rejection decision. Similarly, a BLM decision denying reinstatement of a Native allotment application will be reversed where the case file does not contain a copy of the revocation/rejection deci-sion sent to the applicant or his heirs and the Board is unable to determine whether that decision adequately informed the applicant of the opportunity to obtain review of the decision.

APPEARANCES: William E. Caldwell, Esq., Alaska Legal Services Corporation, Fairbanks, Alaska, for appellants; Bruce E. Schultheis, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The heirs of Alexander Williams, the heirs of George Edwin, and the heirs of James Butler have appealed from three separate decisions dated

April 17, 1989, in which the Alaska State Office, Bureau of Land Management (BLM), denied their respective requests for reinstatement of the Native allotment applications of Alexander Williams (F-0422), George Edwin (F-0462), and James Butler (F-0446). On June 19, 1989, counsel for all three appellants requested that the appeals be consolidated, and by order dated July 12, 1989, we took appellants' motion to consolidate under advisement. Although each appeal possesses a unique factual backdrop, all three involve identical legal issues, and we now grant that motion and consolidate the appeals for disposition in this opinion.

Heirs of Alexander Williams, IBLA 89-453

On August 18, 1915, Alexander Williams filed an application for a Native allotment pursuant to the original provisions of the Alaska Native Allotment Act, as amended, 43 U.S.C. § 270-1 (1970) (repealed on Dec. 18, 1971, by section 18(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1617(a) (1988), subject to applications pending before the Department on that date). <sup>1/</sup> The application (F-0422) described a 160-acre parcel located on the right bank of the Tanana River 1,300 feet below the mouth of Fish Creek.

In a field report dated November 14, 1919, the Superintendent of the United States Public Schools, Bureau of Education, for the Upper Yukon District recommended approval of the allotment even though Williams had died, noting that his widow now held the land, lived there part of each year, and hoped to hold the ground for their son. The First Assistant Secretary approved the application on March 5, 1920. Special instructions for a survey of the allotment were approved on May 5, 1920, but no survey was performed.

In a January 27, 1927, field report prepared following a reexamination of the allotment, the inspector found that Williams' widow was now dead and that the surviving son had stated in an interview that he had never lived on the land, did not intend to live there, and did not want to keep the allotment. The inspector, therefore, recommended rejecting the application and closing the case. On September 21, 1927, the Assistant Secretary approved

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<sup>1/</sup> Prior to the Aug. 2, 1956, amendments to the Alaska Native Allotment Act, the Act of May 17, 1906, 34 Stat 197, provided:

"That the Secretary of the Interior is hereby authorized and empowered, in his discretion and under such rules as he may prescribe, to allot not to exceed one hundred and sixty acres of nonmineral land in the District of Alaska to any Indian or Eskimo of full or mixed blood who resides in and is a native of said District, and who is the head of a family or is twenty-one years of age; and the land so allotted shall be deemed the homestead of the allottee and his heirs in perpetuity and shall be inalienable and nontaxable until otherwise provided by Congress. Any person qualified for an allotment as aforesaid shall have the preference right to secure by allotment the nonmineral land occupied by him, not exceeding one hundred and sixty acres."

the recommendation of the Commissioner of the General Land Office (GLO) that approval of the allotment be revoked.

On October 4, 1927, the Commissioner notified the Register and Receiver in Fairbanks that approval of the application had been revoked on September 21, 1927, and directed him to address registered letters in the name of Williams to the Post Office nearest the land and to the applicant's address of record, informing Williams of the decision to revoke the approval and affording him 90 days within which to show cause why the application should not be rejected or to appeal. Although the record contains a return receipt card signed by Robt Alexander Williams on November 5, 1927, no copy of the letter sent to Williams appears in the case file. By letter dated March 17, 1928, the Ex-officio Register informed the Commissioner that the copy of the October 4, 1927, letter sent to Williams had been received on November 5, 1927, and that no response had been submitted. On April 27, 1928, the allotment was finally rejected. The case file contains no evidence that Williams' son was notified of this final rejection decision.

In the early 1980's, BLM conducted a review of closed Native allotment applications, including Williams' application. On July 2, 1986, BLM reactivated the case and requested a field report. In a field report dated September 29, 1987, and approved on November 2 and 3, 1987, the field examiner, while noting that land in the allotment conflicted with State Selection F-23237 and Village Selection F-14944-B, recommended that the allotment be approved as described in the attached survey instructions. By notice dated May 11, 1988, BLM requested that the heirs of Williams inform it if the land described in the field report was the land Williams intended to apply for and, if so, to amend the description accordingly. On May 17, 1988, the Bureau of Indian Affairs (BIA), on behalf of the heirs, filed the amended description. 2/

After requesting and receiving an opinion from the Solicitor as to whether the case should be re-closed, BLM informed Williams' heirs in a letter dated November 14, 1988, that the case had been reinstated in error. BLM found that the applicant had not provided proof of 5 years of substantially continuous use of the land as required by the 1956 amendments to the Alaska Native Allotment Act, 43 U.S.C. § 270-3 (1970), and determined that the doctrine of administrative finality precluded further consideration of the case since no appeal had been taken from the 1927 revocation of approval of the allotment.

On March 14, 1989, BIA sought reinstatement of the case, and on April 17, 1989, BLM denied the request for reinstatement.

#### Heirs of George Edwin, IBLA 89-454

By application dated September 17, 1915, and filed April 18, 1916 (F-0462), George Edwin applied for an allotment pursuant to the original

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2/ The allotment, as amended, embraces 160 acres within secs. 16 and 21, T. 3 N., R. 20 W., Fairbanks Meridian.

provisions of the Alaska Native Allotment Act, supra. The requested land consisted of a 160-acre tract of land lying on the right bank of the Yukon River about 16.2 miles above the Town of Tanana. 3/ In a field report dated March 18, 1919, the Superintendent recommended approval of the application, finding that Edwin, his wife, his mother, and his brothers had lived on the land since the summer of 1915 and had erected improvements on the land. This field report was approved by the Chief of Field Division in a January 15, 1920, letter transmitting the report to the Commissioner, GLO, and the First Assistant Secretary approved the allotment on March 22, 1920. Special instructions for the survey of the tract were requested on April 24, 1920, but no survey was conducted.

In a January 27, 1927, field report prepared after a reexamination of the allotment, the inspector stated that Edwin was now deceased and had left a 24-year-old son who was living in Tanana. 4/ The inspector reported that he had interviewed the son who had indicated that he did not want the allotment, had not lived there since his father's death, and did not intend to return there. The inspector recommended that the application be rejected. On September 23, 1927, the Assistant Secretary approved the recommendation of the Commissioner, GLO, that approval of the allotment be revoked.

On October 5, 1927, the Commissioner informed the Register and Receiver in Fairbanks that approval of Edwin's application had been revoked on September 23, 1927, and instructed him to address registered letters in the name of Edwin to the Post Office nearest the land and to the applicant's address of record, informing Edwin of the decision to revoke the approval and affording him 90 days within which to show cause why the application should not be rejected or to appeal. Although the record contains a return receipt card signed by George Edwin himself on November 26, 1927, no copy of the letter sent to Edwin appears in the case file. By letter dated March 17, 1928, the Ex-officio Register notified the Commissioner that the copy of the October 5, 1927, letter sent to Edwin had been received on November 26, 1927, and that no response had been submitted. On April 27, 1928, the allotment was finally rejected. Nothing in the case file suggests that this rejection decision was sent to Edwin.

BLM reexamined the Edwin case as part of its Native allotment review. On March 4, 1986, BLM determined that Edwin's heirs had relinquished any interest in the land. By letter dated March 8, 1988, BIA requested that the case be investigated and Edwin's Native allotment application reinstated. BIA indicated that Edwin's daughter claimed that the allotment should never have been closed because Edwin did not have a 24-year-old son in 1927 who could have relinquished the allotment and because Edwin did not die until 1972. In September 1988 BIA submitted affidavits further supporting its reinstatement request.

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3/ This tract is located within secs. 9 and 10, T. 4 N., R. 20 W., Fairbanks Meridian.

4/ This information was incorrect. Edwin did not die until 1972, and his oldest son, who was born in August 1921, was only 5 years old in January 1927.

In a memorandum to BIA dated November 22, 1988, BLM recited the history of Edwin's allotment application and concluded that the application was properly closed. BLM's rationale for this conclusion focused on Edwin's failure to provide proof of 5 years of substantially continuous use of the land as required by the 1956 amendments to the Alaska Native Allotment Act, 43 U.S.C. § 270-3 (1970), and on the doctrine of administrative finality which, according to BLM, precluded further consideration of this case since no appeal had been taken from the 1927 revocation of approval of the allotment.

On March 14, 1989, BIA again sought reinstatement of Edwin's allotment application, and on April 17, 1989, BLM denied the request for reinstatement.

Heirs of James Butler, 89-458

By application dated September 15, 1915, and filed April 18, 1916 (F-0446), James Butler applied for an 80-acre allotment pursuant to the original provisions of the Alaska Native Allotment Act, *supra*. The requested parcel was situated on the left bank of the Yukon River opposite the Mission of Our Savior. In a field report dated May 1, 1919, the Superintendent noted that Butler had camped and begun building a cabin on the land, but that Butler had died in October 1917 before residence on the land had actually been established. The report indicated that Butler was survived by a widow, who had made no effort to hold the land, and a 10-year old son, who was being cared for in the vicinity by a village chief. The Superintendent recommended that the allotment be held to see if the son or widow would make any effort to hold the place. On June 11, 1919, the acting Chief, Field Division, recommended that the certificate of allotment be issued in the name of the widow.

By letter dated June 16, 1920, the Commissioner, GLO, reviewed the inheritance laws of the District of Alaska, and recommended that the allotment application be approved for Butler's son. The Assistant Secretary approved the Commissioner's recommendation on June 23, 1920. Special instructions for the survey of the allotment were approved on July 28, 1920, but no survey was performed.

In the summer of 1925, a field investigation of the allotment was made, and in a field report dated March 30, 1926, the inspector recommended rejection of the application because Butler's widow had remarried, was living 375 miles from the allotment, and had not lived on the land or been in the vicinity of the allotment for 6 years. On July 2, 1926, the Assistant Commissioner, GLO, determined that, in accordance with the June 1920 approval decision, the allotment would be allowed to stand awaiting use by the son when he came of age.

On September 12, 1930, the Acting Commissioner directed the Register and Receiver in Fairbanks to advise the son, who would now be of full age, that he had 60 days to file a showing with respect to use and occupancy of the allotment or to indicate whether or not he desired to retain the land

included in the application. The Acting Commissioner further stated that if the allotment was no longer sought, a relinquishment should be filed, and that, if no action were taken, recommendation would be made to cancel approval of the allotment and to reject the allotment. By letter dated October 3, 1930, addressed to Butler's heirs, the Ex-officio Register forwarded a copy of the September 12, 1930, letter, and indicated that the allotment application was being held for rejection and that the heirs had 60 days to inform that office as to whether they wished to retain the allotment. A relinquishment form was also included with the request that it be executed if the land was no longer desired. A return receipt card in the case file indicates that this letter was received on November 21, 1930, by Deaconess Bedell.

No response to the October 3, 1930, letter was received, and on March 27, 1931, approval of Butler's application was cancelled and the application was finally rejected. Nothing in the record indicates that the rejection decision was sent to Butler's heirs.

BLM included Butler's application in its early 1980's review of closed Native allotment applications. In August 1985 BIA requested reinstatement of Butler's Native allotment application on behalf of Butler's heirs, and on March 18, 1986, BLM notified BIA that the allotment application had been reinstated on October 31, 1985.

In a field report dated August 31, 1987, and approved September 22, 1987, the field examiner recommended that the allotment be approved at the location described in the included survey instructions. In so doing, the examiner recognized that part of the land requested had been transferred to the Native village corporation by interim conveyance and that title recovery would be required, and that other portions of the land were included in Village Selection F-14944-A. On March 10, 1988, BLM requested that the description of the allotment be amended to conform to the location set out in the field report, and on April 18, 1988, BIA filed the corrected description. <sup>5/</sup> On June 28, 1988, the State of Alaska protested Butler's allotment application.

After requesting and receiving an opinion from the Solicitor, BLM notified Butler's heirs by letter dated November 7, 1988, that the case had been reinstated in error. BLM found that the applicant had not provided proof of 5 years of substantially continuous use of the land as required by the 1956 amendments to the Alaska Native Allotment Act, 43 U.S.C. § 270-3 (1970), and determined that the doctrine of administrative finality precluded further consideration of the case since no appeal had been taken from the 1931 rejection of the allotment application.

On March 14, 1989, BIA sought reinstatement of Butler's allotment application, and on April 17, 1989, BLM denied the request for reinstatement.

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<sup>5/</sup> The allotment, as amended, includes 80 acres within secs. 13, 14, 23, and 24, T. 4 N., R. 22 W., Fairbanks Meridian.

Discussion

In the March 14, 1989, requests for reinstatement of all three allotment applications, BIA emphasized that the 5-year use and occupancy requirement did not exist between 1915 and 1931 while these applications were originally pending. BIA explained that the 5-year use and occupancy requirement first arose as an administrative rule in 1935 and was finally ratified in the 1956 amendment to the Alaska Native Allotment Act. BIA noted that the applications had originally been approved based on the conclusion that the applicants had fulfilled the requirements under the 1906 Act. Accordingly, BIA requested that the cases be reopened and adjudicated under the laws applicable when the applications were originally pending. <sup>6/</sup>

In its April 17, 1989, decisions denying the requests for reinstatement, BLM determined that the Native allotment applications were properly closed. After briefly reciting the history of the cases leading up to the revocations of the approvals of the applications and their final rejections, <sup>7/</sup> BLM concluded that the applicants or their heirs

might have corrected these errors or defects, if errors or defects there were, by timely appeal to the Secretary of the Interior from the decision of the General Land Office. As timely appeal was not taken then, it is now too late to seek to correct any errors or defects by collateral attack.

An appellant's collateral attack on an appealable decision of over fifty years ago would not be permitted in the courts and should not be permitted here. The doctrine of administrative finality also applies to this case. If the allotment application was [sic] to be reinstated, the doctrine of administrative finality would bar any further consideration, as the period for appeal has long run. [Citations omitted.]

(Decisions at 1-2).

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<sup>6/</sup> In the request for reinstatement of Edwin's allotment application, BIA also noted that a question existed as to who the 24-year old man was with whom the inspector spoke in 1927 and upon whose disclaimer of interest in the allotment the inspector based his recommendation that the allotment be rejected, repeating that Edwin's oldest son was only 5 years old at that time.

<sup>7/</sup> In its decision in the Williams case, BLM found that the signed registry receipt card demonstrated that notice of the pending rejection of the application was properly served on Williams' heirs. In its decision in the Edwin case, BLM acknowledged that Edwin did not die until 1972, but found that the registry return receipt card was signed by George Edwin himself, thus indicating that he had actual notice of the pending rejection. In the Butler decision, BLM simply found that notice was issued to Butler's heirs advising them of the pending rejection.

On appeal appellants raise four issues which they claim mandate reversal of the BLM decisions. Appellants first contend that the initial approval of the allotments granted the applicants equitable title to the allotments, and that the Secretary's revocations of the allotment approvals in 1927 and 1931 were void since he had no power to diminish that title. <sup>8/</sup> Alternatively, appellants assert that section 905(a) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a) (1988), mandates that these applications be reinstated either for legislative approval or for adjudication. Appellants further argue that the procedures employed by the Department in reaching the revocation decisions denied the applicants their constitutional rights to due process because the decisions were based on ex parte communications, and the applicants were not given actual notice of the decisions nor were they afforded an opportunity for a hearing. Finally, appellants challenge BLM's reliance on administrative finality as the basis for refusing to reinstate the applications.

In its answer BLM rejects appellants' position that no matter how much time has passed, they should be allowed to reopen and argue de novo the merits of a Departmental decision, and urges that the doctrine of administrative finality bars reinstatement of these Native allotment applications. <sup>9/</sup> BLM emphasizes that appellants are attempting to revive decisions issued over 50 years ago which were not appealed at that time. The doctrine of administrative finality, BLM contends, precludes reconsideration of an agency decision after a party has been given an opportunity for Departmental review and did not seek review. BLM asserts that allowing the reopening of long-closed administrative matters would lead to an unmanageable and unfair appellate process and impair the orderly administration of government.

[1] In Theodore Suckling, 121 IBLA 52 (1991), the Board reversed a BLM decision denying a request by the heir of a Native allotment applicant to reinstate a Native allotment application. The issue of administrative finality was addressed in footnote 6. Therein we said:

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<sup>8/</sup> We reject appellants' contention that the Secretary had no power to alter his approval of the allotment applications. The vesting of equitable title does not preclude administrative action to rescind that title as long as legal title remains in the United States, and if the Department finds its decision approving an allotment to be in error, that decision can be rescinded or modified by administrative action. See Ramona Fields, 110 IBLA 367, 372-73 (1989); Eugene M. Witt, 90 IBLA 265, 267 (1986); Leo Titus, Sr., 89 IBLA 323, 327-28, 92 I.D. 578, 581 (1985). Thus, the initial approvals of the Native allotment applications did not prevent the Department from reevaluating those applications.

<sup>9/</sup> BLM also requests dismissal of the appeals on the ground that the standing of the heirs has not been shown. We find that appellants have shown that they are heirs of the applicants and, thus, have established their standing to pursue these appeals. We, therefore, deny BLM's request to dismiss these appeals.

6/ In this regard, these cases represent an exception to the general rule under the doctrine of administrative finality, the administrative counterpart of *res judicata*, that a party is precluded from seeking reconsideration of a decision of an agency official when the party or his predecessor in interest had the opportunity to obtain review within the Department and took no action. See Lloyd D. Hayes, 108 IBLA 189, 192-93 (1989). The basis for this exception is found in the Secretary's special fiduciary responsibility to Native Americans, in this case, Native Alaskans, under which the Secretary and his delegates have a fiduciary duty to examine the circumstances of any purported relinquishment of a Native allotment. Matilda Titus, 92 IBLA 340, 351 (1986) (Grant, A.J., concurring); see Aquilar v. United States, 474 F. Supp. [840, 846-47 (D. Alaska 1979)].

The failure of the heirs to challenge the relinquishment for over 40 years, during which time the State applied for and was granted title to the lands originally covered by Chief Alexander's application, might well establish grounds for invocation of the doctrine of laches against their claim. The Board of Land Appeals, however, is not the proper forum to assert equitable remedies such as laches. Such rights and equities may be properly resolved, however, in any legal action initiated through the courts to cancel the patent issued to the State. See Matilda Titus, *supra* at 351-52.

The Board has held that reexamination of a final decision is available only upon a showing of compelling legal or equitable reasons, such as a violation of basic rights or the need to prevent injustice. Melvin Helit v. Gold Fields Mining Corp., 113 IBLA 299, 308-309, 97 I.D. 109, 114 (1990); Estate of Sam McGee, 108 IBLA 375, 379 (1989); Lloyd D. Hayes, *supra*; Turner Brothers Inc., 102 IBLA 111, 121 (1988), and cases cited therein.

Under the circumstances, reinstatement of the Native allotment applications at issue here is warranted. A party (or his predecessor-in-interest) must be given notice of the adverse decision and provided an opportunity to obtain review of that decision in order for the failure to obtain review to preclude reexamination of that adverse decision. See Theodore Suckling, *supra* at 59. The Butler case file contains no evidence that any of Butler's heirs received notice of the decision holding the application for rejection and requiring proof of use and occupancy of the allotment. Although the return receipt card was signed by Deaconess Bedell, nothing in the record indicates what, if any, relationship existed between Bedell and Butler's heirs. Because the heirs did not receive notice of the adverse decision, they did not have an opportunity to obtain review of the decision, thus, they are not collaterally estopped from obtaining reinstatement of Butler's Native allotment application.

Although the return receipt cards found in the Williams and Edwin case files establish that Williams' heir and Edwin himself received something from the Department, copies of the documents sent do not appear in the record. Without these documents, we are unable to determine whether

Williams' heir and Edwin were properly notified of the decisions to revoke approval of the allotment applications and hold those applications for rejection, and whether they were adequately informed of their right to challenge those decisions and how to exercise that right. Given these circumstances, we do not find that the heirs are collaterally estopped from pursuing reinstatement of Williams' and Edwin's Native allotment applications.

On remand, BLM should reinstate all three Native allotment applications and either approve or adjudicate them in accordance with section 905(a) of ANILCA, 43 U.S.C. § 1634(a) (1988).

Accordingly, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and the cases are remanded for further action consistent with this decision.

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Gail M. Frazier  
Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge

April 29, 1992

IBLA 89-453, 89-454, 89-458	:	F-0422, F-0462, F-0446
121 IBLA 224 (1991)	:	
	:	Native Allotment
HEIRS OF ALEXANDER WILLIAMS	:	
HEIRS OF GEORGE EDWIN	:	Request for Reconsideration
HEIRS OF JAMES BUTLER	:	Granted; Decision Reaffirmed
(ON RECONSIDERATION)	:	

### ORDER

On November 13, 1991, the Board issued a decision in Heirs of Alexander Williams, Heirs of George Edwin, Heirs of James Butler, 121 IBLA 224 (1991), reversing three decisions of the Alaska State Office, Bureau of Land Management (BLM), which had denied requests to reinstate the Native allotment applications of Alexander Williams, George Edwin, and James Butler. We found that based on the records before us, the applicants' heirs were not collaterally estopped from obtaining reinstatement of the applications.

BLM has requested reconsideration of the Board's decision to the extent we required reinstatement of James Butler's Native allotment application. In our decision, we stated:

The Butler case file contains no evidence that any of Butler's heirs received notice of the [1930 General Land Office (GLO)] decision [1/] holding the application for rejection and requiring proof of use and occupancy of the allotment. Although the return receipt card was signed by Deaconess Bedell, nothing in the record indicates what, if any, relationship existed between Bedell and Butler's heirs. Because the heirs did not receive notice of the adverse decision, they did not have an

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1/ By letter dated Sept. 12, 1930, the Acting Commissioner, GLO, directed the Register and Receiver in Fairbanks, Alaska, to advise Butler's son that he had 60 days to file a showing with respect to use and occupancy of the allotment or to indicate whether or not he desired to retain the land included in the allotment. The letter also stated that a relinquishment should be filed if the allotment was not wanted and that if no action were taken, recommendation would be made to cancel approval of the allotment and to reject the allotment. By letter dated Oct. 3, 1930, addressed to Butler's heirs, the Ex-officio Register forwarded a copy of the Sept. 12, 1930 letter, indicated that the allotment application was being held for rejection and that the heirs had 60 days to inform that office as to whether they wished to retain the allotment, and enclosed a relinquishment form with the request that it be executed if the land was no longer desired. The Sept. 12 and Oct. 3, 1930, letters comprise the 1930 GLO decision.

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opportunity to obtain review of the decision, thus, they are not collaterally estopped from obtaining reinstatement of Butler's Native allotment application.

(121 IBLA at 232).

BLM argues that the relationship between Bedell and Butler's heirs can be found on the return receipt card itself which reveals that Bedell signed the card, which named Butler as the addressee, as the "addressee's agent." BLM asserts that where a registered letter is properly mailed to the address of the person to whom the letter is addressed and is delivered there to a person who signs the return receipt as the agent of the addressee, the presumption arises that the person receiving and signing for the registered mail is in fact the agent of the addressee. BLM contends that since there is no evidence rebutting that presumption, Bedell properly received the decision for the Butler heirs, noting that under these circumstances, it is not the addressor's burden to prove that an agency relationship existed between the signatory and the addressee.

BLM further argues that the 1930 GLO decision was served in substantial compliance with the rules governing GLO action at that time. BLM contends that, in accordance with the rules applicable to service on unknown heirs, the decision was addressed to Butler at his last address of record and was actually delivered to the heirs through the agent at that address. Since GLO properly served the decision on Butler's heirs, BLM asserts that the heirs were given an opportunity to obtain review of the decision, and that their failure to seek such review at that time collaterally estops them from now securing reinstatement of the Native allotment application.

In response to BLM's reconsideration request, Butler's heirs do not challenge BLM's assertion that the 1930 GLO decision was served in accordance with the applicable rules for service on unknown heirs. Rather, they contend that the GLO decision was simply a letter informing the addressee that he should execute the enclosed relinquishment if he did not wish to retain the allotment, and emphasize that no relinquishment was ever filed. Butler's heirs also cite the Board's conclusion that nothing in the record indicates that the March 27, 1931, GLO decision cancelling the allotment and finally rejecting the application was sent to Butler's heirs, and assert that BLM has not rebutted that conclusion.

We find that BLM has presented sufficient reason to warrant reconsideration of our determination that Butler's heirs did not receive notice of the 1930 decision holding the application for rejection and requiring proof of use and occupancy of the allotment or relinquishment of the allotment. See 43 CFR 4.403. Butler's heirs have not disputed the sufficiency of service of that decision and it appears that GLO did follow the applicable rules governing service on unknown heirs. See Theodore Suckling, 121 IBLA 52, 59 (1991). Nevertheless, we reaffirm our conclusion that Butler's Native allotment application must be reinstated.

The 1930 GLO decision received by Bendell consisted of two letters: a September 12, 1930, letter from the Acting Commissioner, GLO, to the Register and Receiver, Fairbanks, Alaska, and an October 3, 1930, letter from the Ex-officio Register to Butler's heirs which forwarded the Acting Commissioner's letter to the heirs. The September 12, 1930, letter which was entitled "Indian allotment application held for rejection," recited the history of the allotment application and directed the Register and Receiver to

advise the heirs hereof and require them to file within 60 days from receipt of notice a showing with respect to the use and occupancy they have made of this land or within which to indicate to this office whether or not they desire to retain the land included in this application. In the event they do not desire the land a relinquishment thereof should be filed. Advise the proper Superintendent, Office of Education, hereof and that if no action is taken recommendation will be made that the approval be cancelled and the application finally rejected in its entirety and the case closed.

(Letter at 2, Sept. 12, 1930).

In accordance with the Acting Commissioner's instructions, the October 3, 1930, letter from the Ex-officio Register to Butler's heirs stated:

There is inclosed for your information and action a copy of letter "K" EOR of the Commission of the General Land Office dated September 12, 1930, wherein the allotment application of James Butler, deceased, is held for rejection subject to the right of appeal.

Accordingly you are allowed 60 days from receipt of this notice in which to inform this office as to whether or not you desire the land embraced in the allotment application of James Butler, deceased. In the event you do not care to retain the land you should execute the inclosed relinquishment and forwarddd same to this office. The United States Commissioner at Tanana, Alaska, will assist you in this matter.

The text of these letter reveal that the 1930 GLO decision was not a final, appealable decision rejecting the allotment and advising Butler's heirs and indicated that the failure to respond would result in a recommendation that a final decision cancelling approval of the allotment and rejecting it in its entirety be issued. The allotment was finally rejected by decision dated March 27, 1931, but the record contains no evidence that Butler's heirs were notified of that final decision.

Under these circumstances, we find that Butler's heirs were not properly notified of the final decision rejecting Butler's application, nor were they adequately informed of their right to challenge that decision and how to exercise that right. See Heirs of Alexander Williams, 121 IBLA at 232-33. Accordingly, we reaffirm our conclusion that Butler's heirs are not collaterally estopped from obtaining reinstatement of Butler's Native allotment application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals, by the Secretary of the Interior, 43 CFR 4.1, BLM's request for reconsideration is granted and the Board's decision is reaffirmed.

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Gail M. Frazier  
Administrative Judge

I concur:

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John H. Kelly  
Administrative Judge

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